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MEMORANDUM IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

RICHARD CASE NAGELL, A-16606-H,
Petitioner,
Vs.
DIRECTOR, U.S. MEDICAL CENTER FOR FEDERAL PRISONERS, and, UNITED STATES ATTORNEY GENERAL, et al,
Respondents.

(OR: RICHARD CASE NAGELL, A-83286-L,)

Civil Action No. _____

(OR: WARDEN, U.S. PENITENTIARY, LEAVENWORTH, KANSAS, and, UNITED STATES ATTORNEY GENERAL, et al,

COMES the petitioner in the matter pending, and, by his own counsel, files a MEMORANDUM IN SUPPORT of Petition For Writ Of Habeas Corpus, alleging generally and specifically as follows:

Petitioner was arrested at El Paso, Texas, on September 20, 1963, and charged by state authority with vagrancy, flight to avoid prosecution, and suspicion of armed robbery. He was booked and lodged in the El Paso City Jail after interrogation at the city's Federal Building by agents of the Federal Bureau of Investigation.

FIRST SPECIFIC ALLEGATION: That on September 20, 1963, while being transported by automobile from the State National Bank, El Paso, Texas, to the city's Federal Building, petitioner exclaimed to Mr. Thomas H. White, Jr., a Special Agent of the Federal Bureau of Investigation, "I would rather be arrested than commit treason" or "I would rather be arrested than commit murder and treason"; that another Special Agent of the F.B.I. (not further identified) who was present in the automobile, asked petitioner what he meant; that petitioner did not then or ever later answer his question; that petitioner's outburst and the aforesaid question was heard by another person not herein identified; that either utterance by petitioner later developed into evidence AND ~~important~~ to his defense against the crime for which he was indicted; that such evidence was withheld by the Federal Bureau of Investigation and suppressed by petitioner's court-appointed counsel, against ~~his~~ PETITIONER'S will, at both trials on the merits and on appeal therefrom.

SECOND SPECIFIC ALLEGATION: That petitioner, while confined in the El Paso City Jail, after being ordered to remove all his clothing and ordered inside a strip-cell, was abused by Mr. Pete Blanco and abused, threatened with bodily harm and assaulted by Mr. Carl D. Fortune, both officers of the El Paso Police Department; that such abuse, ~~threat~~ threat, and assault was without just cause or provocation and was witnessed by persons not herein identified; that shortly thereafter petitioner reported such abuse, threat and assault to a person not herein identified who investigated his complaint and found it to be fact; that petitioner was not permitted by his court-appointed counsel to raise the foregoing issue or subpoena witnesses in regard thereto, ~~against his will~~, at either trial on the merits or on appeal therefrom. PETITIONER'S

The next day, September 21, 1963, petitioner was transferred to the El Paso County Jail where he was booked and lodged. He was arraigned before a United States Commissioner under the bank robbery statute. He pleaded not guilty to the charge and waived a preliminary hearing. Bond was set at $25,000.00. Petitioner failed to post bond and was remanded to the custody of the United States Marshal. The state charges were eventually dropped.

THIRD SPECIFIC ALLEGATION: That during an interview by F.B.I. Special Agent Thomas H. White, Jr., and the aforementioned unidentified F.B.I. Special Agent, held on September 21, 1963, Mr. White exclaimed to petitioner, "We don't think you tried to rob that bank either, but we want to know why you want yourself arrested," or words similar and to that effect; that such exclamation later developed into evidence essential to petitioner's defense against the crime charged; that such evidence was withheld by the Federal Bureau of Investigation and suppressed by petitioner's court-appointed counsel, against petitioner's will, at both trials on the merits and on appeal therefrom.

Thereafter (exact date unknown), the United States District Court judge at El Paso, on the government's motion, directed that petitioner be given a mental examination by Dr. R. J. Bennett, an El Paso psychiatrist. On October 11, 1963, Dr. Bennett reported to the court that on two occasions he had attempted to examine petitioner, without success, because he was unwilling to furnish any information.

Thereafter (exact date unknown), petitioner wrote the court, stating, among other things, that he had always acted from love for his country and that his conduct in the bank had been predicated on such love, "however incomprehensible it may appear."

The court first appointed Mr. James E. Hammond of El Paso to represent petitioner. During a hearing held at petitioner's instance on November 4, 1963, petitioner informed the court he no longer desired the services of Mr. Hammond because he had disclosed some confidential information to the F.B.I. Mr. Hammond denied the charge, but was relieved as counsel.

At the same hearing (NOVEMBER 4, 1963), petitioner, by hand-written application [illegible], requested habeas corpus in order to ascertain the particulars of the government's case against him, and to compensate for his waiver of a preliminary hearing. F.B.I. Special Agent Thomas H. White, Jr., testified for the government and a prima facie case was established. Petitioner offered no comment with respect thereto.

FOURTH SPECIFIC ALLEGATION: That in the latter part of October 1963 (exact date unknown), while discussing his contemplated defense with Mr. James E. Hammond, court-appointed counsel, petitioner revealed he had made an unauthorized trip to Cuba; that several days later counsel admitted to petitioner he had disclosed this privileged communication and other information given him in confidence by petitioner to the Federal Bureau of Investigation; that counsel cited his reasons for doing so; that such reasons were invalid; that such disclosure was later confirmed by persons not herein identified; that all such information revealed by petitioner to counsel was material and vital to his defense against the crime charged; that at no time did petitioner authorize the disclosure of any information he provided Mr. Hammond; that by the foregoing, petitioner's privilege to the standard attorney-client relationship was abrogated; that counsel's aforementioned conduct had a direct bearing on petitioner's refusal to accept the services of another El Paso lawyer (Mr. John Langford) appointed thereafter by the court; that counsel's aforementioned conduct bred in petitioner a distrust of other local attorneys subsequently appointed by the court to defend him; that petitioner was not permitted by his court-appointed counsel, against petitioner's will, to raise the aforesaid issue at either trial on the merits or on appeal therefrom.

On November 19, 1963, during an interview held at the El Paso County Jail, petitioner alleged certain violations of his constitutional safeguards by the authorities to Mr. Edward J. Murphy and Mr. Lawrence W. Gorman, Special Agents of the Federal Bureau of Investigation. He signed a written statement they took in that regard. When the interview terminated, petitioner wrote a note to F.B.I. Special Agent Thomas H. White, Jr., and asked Mr. Murphy to give it to Mr. White. Mr. Murphy stated he would do so.

FIFTH SPECIFIC ALLEGATION: That the aforesaid note ~~later, on November 22, 1963,~~ ON NOVEMBER 22, 1963, developed into evidence vital to petitioner's defense against the crime charged; that such evidence was withheld by the Federal Bureau of Investigation from the United States Attorney prosecuting petitioner's case then and ever later; that such evidence was withheld by the F.B.I. from petitioner's ~~appointed~~ counsel appointed by the Court ever later; that such evidence was suppressed by petitioner's court-counsel at both trials on the merits and on appeal therefrom, in that he refused to ask the court to issue a subpoena duces tecum for such evidence, after petitioner insisted he do so.

On November 22, 1963, at approximately 1:00 P.M. Central Standard Time, petitioner wrote a note and handed it to Mr. Mendoza (also known as "Chuy"), a deputy sheriff and jailer on duty at the El Paso County Jail, asking that he take it to the Jail Captain immediately. The note was a request to speak to the Secret Service as soon as possible, that it was "important." The writing of such note and the handing of such note to Mr. Mendoza was witnessed in its entirety by a person not herein identified.

Thereafter (exact date unknown), petitioner was visited by F.B.I. Special Agent Thomas H. White, Jr. Petitioner stated to Mr. White that he had asked to speak to the Secret Service, not the F.B.I. He said he had sent a letter to the F.B.I. in Washington prior to his arrest "about Lee Oswald," and that the F.B.I. had neglected to do anything about it. Mr. White asked petitioner where and how he had met Mr. Oswald, and other questions. Petitioner answered several questions but refused to answer some others. He said he would speak only to the Secret Service. Whereupon, Mr. White became angry and left the interview room.

Thereafter (exact date unknown), petitioner was visited by Mr. White, another Special Agent of the F.B.I. who stated he was handling the F.B.I.'s investigation into the assassination of President Kennedy, and a man who identified himself as a member of the Secret Service. Whereupon, petitioner refused to answer any questions truthfully or elaborate on any answers he gave, because of the presence of the aforesaid F.B.I. agents.

That same night petitioner wrote a letter to the Chief, Secret Service Division, U.S. Treasury Department, Washington, D.C., advising that there had been a conspiracy to murder President Kennedy and other government officials; that he would be willing to give information in regards thereto; that he had been questioned by a member of the Secret Service in the presence of the F.B.I., and that he could not be expected to answer questions truthfully under those conditions. Petitioner never received a response to his letter from the Secret Service.

Thereafter, the court appointed Mr. John Langford of El Paso to represent petitioner, but petitioner informed him, and later the court, he did not desire the services of any court-appointed counsel, that he would defend himself. Mr. Langford was excused as counsel during a hearing held on December 4, 1963.

At the same hearing, petitioner, by hand-written application and verbal argument, contended he was being denied a speedy trial. His petition was summarily denied. Petitioner then informed the court that certain personal effects taken from him at the time of his arrest by agents of the F.B.I. had not yet been returned to him, and that he needed these effects to present as evidence for his defense if he was going to stand trial. The presiding judge, the Honorable R. E. Thomasen, thereupon instructed the Assistant United States Attorney present at the hearing, Mr. Fred Morton, to see that the personal effects belonging to petitioner were returned to him.

On December 14, 1963, F.B.I. Special Agent Thomas H. White, Jr., brought most of the aforementioned personal effects to the El Paso County Jail and permitted petitioner to inspect them, but he would not return the items petitioner stated he needed. Petitioner was made to sign a receipt for what personal effects were returned to him, but Mr. White did refused to give petitioner any kind of a receipt for the items he kept.

SIXTH SPECIFIC ALLEGATION: That on September 20, 1963, agents of the Federal Bureau of Investigation seized and confiscated personal and private property belonging to and in the possession of petitioner, such property constituting evidence crucial to his defense against the crime charged; that such property consisted in part of two pocket-size notebooks (one of them containing names of certain agents and employees of the Central Intelligence Agency), two receipts for registered mail, ten or more photographs of various individuals, two Mexican tourist cards (one of them for multiple entrance) made out to the names "Joseph Kramer" and "Albert" or "Aleksei Hidel;" that the F.B.I., having been duly apprised of the court's instructions to return the aforesaid property to petitioner, refused ever to do so; that such refusal precluded petitioner from presenting evidence crucial to his defense at either trial on the merits or on appeal therefrom; that prior to each trial petitioner insisted court-appointed counsel ask the court to issue a subpoena duces tecum for such evidence and that counsel refused to do so; ~~that the foregoing, in part and as a whole, constituted, besides other transgressions on petitioner's rights as a defendent in a criminal case, an unreasonable seizure of private property in violation of petitioner's safeguards pursuant to the Fourth Amendment to the United States Constitution.~~

Meanwhile, (exact date unknown), petitioner had written to the United States Department of Justice complaining of an "illegal seizure of personal and private property by the F.B.I.," and mentioning the statement he had signed for F.B.I. Special Agents Edward J. Murphy and Lawrence W. Gorman on November 19, 1963. Petitioner never received an answer to his letter.

On January 6, 1964, petitioner was interviewed at the El Paso County Jail by Mr. Murphy and Mr. Gorman, F.B.I. He was accused of having acted as an "unregistered agent" for a foreign power and of aiding and abetting in the commission of a capital offense. He was accused of having resigned his commission from the Army for reasons not included in his Letter of Resignation. Mr. Murphy said he thought petitioner had "something you want to get off your chest," or words similar and to that effect, and added "we are glad we got to you before you did anything to yourself," or words similar and to that effect. In the latter regard, Mr. Murphy drew a comparison between petitioner and one Jack Dunlap, a suspected spy, who allegedly committed suicide in July 1963. Mr. Murphy asked petitioner if he would be willing to go to "Springfield" for awhile, and when petitioner replied that he would not, that he wanted to stand trial because he was innocent of any wrongdoing, Mr. Murphy stated "Well, you might have to go to prison for awhile," or words similar and to that effect, indicating

petitioner would be convicted if he stood trial. Petitioner became angry and said that the F.B.I. was "trying to cover everything up," to which Mr. Murphy answered, "What do you mean?"....to which petitioner retorted, "you know/ damn well what I mean."

At this interview, petitioner gave a signed statement admitting the reason he had entered the bank on September 20, 1963, and why he had wanted himself arrested by federal authorities. Petitioner told Mr. Murphy and Mr. Gorman he thought initially he would be tried for discharging a firearm on property subject to federal jurisdiction, but that now he could "see the handwriting on the wall."

SEVENTH SPECIFIC ALLEGATION: That the aforementioned admission, duly signed and witnessed, constituted evidence vital to petitioner's defense against the crime for which he was later indicted; that according to court-appointed counsel (Mr. Joseph A. Calamia), the Federal Bureau of Investigation denied on his inquiry, before the first trial on the merits, that it was in possession of such evidence or that petitioner had ~~g~~ ever given its ~~AAA~~ agents such evidence; that if counsel's allegation is fact, the F.B.I. knowingly withheld such evidence before and at the first trial on the merits; that counsel, at petitioner's second trial, having been provided with a copy of the aforementioned admission or statement per the court's order, refused ~~without any explanation~~ to make any attempt to have the original introduced into evidence, despite petitioner's insistence he do so; that counsel's refusal amounted to suppression of evidence vital to petitioner's defense, for the court would surely have permitted the truth to be introduced; that had such evidence not been withheld or suppressed at either trial on the merits, but had it been introduced together with other evidence that was withheld or suppressed, it probably would have been so persuasive to reasonable members of the juries as to have caused them to return a verdict of acquittal; that at the very least, introduction of such evidence at either trial on the merits or on appeal therefrom, would have opened the door for petitioner to testify as to the truth in his case, a right then and ever later denied him; ~~that by the foregoing, in part or as a whole, petitioner's right to due process pursuant to the Fifth Amendment of the United States Constitution was abrogated.~~

Thereafter, in January 1964 (exact date unknown), petitioner was indicted by a federal Grand Jury at San Antonio, Texas, for having entered a federally insured bank with intent to rob and for attempting to commit a robbery in violation of Section 2113 (a), Title 18, U.S.C.A.

Between January 8, 1964 and January 21, 1964 (exact date unknown), petitioner wrote another letter to the United States Attorney General citing violations of his constitutional safeguards, that the F.B.I. still held evidence he needed for his defense, that he was being intimidated to incriminate himself in the alleged commission of an offense other than the one for which he was charged, and that he was being denied a speedy trial. Petitioner never received an answer to his letter.

At a hearing held on January 24, 1964, the court, on the government's motion, ordered petitioner committed to the U.S. Medical Center for Federal Prisoners, Springfield, Missouri, for a period of psychiatric observation to determine his mental competency to stand trial. Petitioner contended his military and Veterans Administration records would prove he had no psychosis.

At the same hearing, petitioner stated to the court he had been questioned by the F.B.I. regarding alleged subversive activities and activities of a nature inimical to the best interests of the United States, that he had been asked questions by the Secret Service regarding "Lee Harvey Oswald," and that he would not willingly participate in any psychiatric examination or consultation at Springfield. After

leaving the courtroom, petitioner was approached by a group of newsmen, one of whom asked petitioner a question pertaining to the assassination of President Kennedy; whereupon, both of petitioner's arms were grabbed by Deputy U.S. Marshals Jack Graves and, possibly, Jim Johnson and he was hustled into an elevator. Before the elevator door closed, petitioner shouted to the aforesaid newsman, "The F.B.I. is responsible for the assassination of President Kennedy," meaning that it had neglected to take steps which in petitioner's opinion would have prevented the President's murder. Petitioner's outcry was broadcast over a local radio station soon thereafter.

As a sidepoint, it might be mentioned here that during petitioner's long incarceration in the El Paso County Jail, then and later, he was never permitted to read a newspaper, but that he did, on occasion in 1966, read newspapers which were smuggled to him by another inmate of the jail. Altogether, petitioner spent over one year confined in such jail.

Thereafter, on January 26, 1964, petitioner was transported by automobile to the U.S. Medical Center for Federal Prisoners.

On March 6, 1964, the Chief Medical Officer at the U.S. Medical Center for Federal Prisoners reported to the court a diagnosis that petitioner had a "passive-aggressive personality"; that he was competent to stand trial as he had a rational as well as a factual understanding of the proceedings against him, and that he was able to assist rationally in his defense.

On or about March 12, 1964, petitioner was returned to the El Paso County Jail.

EIGHTH SPECIFIC ALLEGATION: That petitioner was not at the time of the offense alleged, at the time of any of his commitments to the U.S. Medical Center for Federal Prisoners, or ever later, insane or otherwise devoid of his mental faculties; that he is not now, nor has he ever been, certified psychotic or insane by any medical authority, or adjudicated mentally incompetent in a court of law, or adjudged to be incapable of acting or assisting in his own defense; that this premise, unless determined otherwise in a court of law, should be considered as fact and pertinent to all allegations set forth herein.

* (OVER) INCLUDE HERE

At a hearing held on March 24, 1964, petitioner, convinced that the delay in bringing him to trial stemmed from his refusal to accept the services of counsel appointed by the court, requested such counsel be appointed. Whereupon, the court appointed Mr. Gus Rallis and Mr. Richard B. Perrenot, both of El Paso, to represent him.

The case was called on March 30, 1964, and then continued for the purpose of allowing counsel additional time in which to prepare for trial.

On April 10, 1964, at a hearing involving a request for issuance of subpoenas for certain records desired by petitioner, he exclaimed, "I think I'm being railroaded because I'm an accused communist and because I've been accused of being an espionage agent."

NINTH SPECIFIC ALLEGATION: That on April 10, 1964, an employee of the sentencing court erred in recording petitioner's outburst, aforementioned, in that the court record shows petitioner as stating, "I think that I am being railroaded because I am a communist and because I have been accused of being an espionage agent"; that such erroneous statement was made public in and around El Paso, Texas; that such error has never been corrected despite repeated efforts by petitioner to have court-appointed counsel entertain an affidavit affirming to the contrary; that such uncorrected error

* Sometime during March and April 1964 (exact date unknown), petitioner caused a letter to be mailed, addressed to the European Civil Rights Union, Fuller, Texas, which requested the recipient to murder President Kennedy prior to the inauguration of the campaign to murder President Kennedy prior to the inauguration of the campaign to murder President Kennedy prior to the inauguration of the campaign

was twice referenced in the appelate court's opinion reversing petitioner's first conviction; that such uncorrected error is and has been throughout the litigation in this case unduly prejudical to petitioner.

At sometime between April 10, 1964 and April 20, 1964 (exact date unknown), petitioner drafted a letter to the Director, Federal Bureau of Investigation, Washington, D.C./ He asked counsel, Mr. Rallis, to have the letter typed and to have several carbon copies made of it, which Mr. Rallis did the next day. After petitioner signed the original he requested that Mr. Rallis mail it via postal registry, which he stated he would do, in the presence of Mr. Perrenot.

In the letter, aforementioned, petitioner made reference to another letter, signed with either the name "Joseph Kramer" or "Robert Nolan," which had been mailed at petitioner's instance, via postal registry, to the Director, Federal Bureau of Investigation, in September 1963 prior to his arrest. That letter advised of a conspiracy to murder the Chief Executive of the United States (or President John F. Kennedy) during the latter part of September 1963, and the identity and whereabouts of one of the key persons, if not the key figure, involved: "Albert" or "Aleksei Hidel."

In the April Letter, aforementioned, petitioner explained that it was he who had signed the September Letter, that the F.B.I. should realize this, and that the truth was going to be brought out if he stood trial on "trumped-up charges."

TENTH SPECIFIC ALLEGATION: That files and dossiers of the Federal Bureau of Investigation, including File No. 91 1189 14, will reveal that the names "Joseph Kramer" and "Robert Nolan" are pseudonyms of petitioner, used by him during the month of September 1963, and prior thereto; that the pseudonym "Robert Nolan" was authorized for petitioner's use by an intelligence organization operating under the control of responsible officials of the United States Government; that petitioner used both of the aforesaid pseudonyms at various locations in the United States and in three foreign countries during the period September 1962 through September 1963; that petitioner's use of such pseudonyms in the United States and Mexico was well known to the F.B.I. prior to his arrest; that files and dossiers of the F.B.I. and the Central Intelligence Agency will reveal that the names "Albert Hidel" and "Aleksei Hidel" were pseudonyms used by Mr. Lee H. Oswald during the month of September 1963 and prior thereto.

ELEVENTH SPECIFIC ALLEGATION: That a letter mailed at petitioner's instance between September 9, 1963 and September 17, 1963, to the Director, Federal Bureau of Investigation, later developed into evidence crucial to his defense against the crime charged; that such evidence was withheld by the F.B.I. at both trials on the merits; that through intimidation and coercion by court-appointed counsel petitioner was not allowed to raise the aforesaid issue or subpoena witnesses in regards thereto at or before either trial on the merits or on appeal therefrom; that had such evidence been introduced at either trial on the merits it probably would have been so persuasive to reasonable jurors that, coupled with other evidence petitioner was not permitted to introduce, it would have caused them to return verdicts of acquittal; that, at the least, introduction of such evidence at either trial on the merits would have opened the door for petitioner to testify as to the truth in his case, a right then and ever later denied him.

On April 20, 1964, the case was again called at which time petitioner requested relief of one of his counsel, Mr. Perrenot. Petitioner alleges that the reason he asked for Mr. Perrenot's relief concerned his remark to petitioner, in the presence of

Mr. Rallis, that he had heard petitioner was a communist and that he despised everything petitioner stood for, but that he would still represent him if he wanted his assistance. Petitioner did not feel he could safely go to trial with such counsel. The court permitted Mr. Perrenot to withdraw from the case and another El Paso lawyer, Mr. Joseph A. Calamia, was substituted in his stead.

At a hearing held in the afternoon of the same date, April 20, 1964, Mr. Calamia reported to the court that petitioner was refusing to cooperate in the matter of obtaining what he termed "complete psychiatric reports." Petitioner denied any mental disability to the district court judge and said he had already been found mentally competent to stand trial.

TWELFTH SPECIFIC ALLEGATION: That prior to the aforesaid hearing, counsel, Mr. Calamia, had asked petitioner to sign papers authorizing the Veterans Administration to forward his medical records to the court (through the United States Attorney who was prosecuting petitioner's case); that petitioner refused, advising counsel that though he had been awarded a 64% disability rating by the V.A., it was not for a mental condition and that neither the Army or the V.A. had ever found him to be afflicted with a nervous disorder; that petitioner did not then or ever later want to raise the issue of insanity or mental incompetency as a defense against the crime charged, and that he so informed his counsel; that petitioner apprised counsel that the defense of insanity or mental incompetency was contrary to the truth and facts involved in his case; that petitioner apprised counsel, pointedly Mr. Rallis, before Mr. Calamia's appointment, of the reasons why he had wanted himself arrested by federal authorities on September 20, 1963, and why he had subjected himself to arrest in the manner he did; that such reasons related to a conspiracy to murder the former Chief Executive of the United States, President John F. Kennedy.

At the same hearing, held in the afternoon of April 20, 1964, petitioner stated to the court he would not cooperate with his appointed counsel in so far as any defense depended on mental incompetency, citing that such a defense was contrary and repugnant to the truth in his case. The upshot of this was that the court allowed both Mr. Calamia and Mr. Rallis to withdraw as counsel, at their request. The presiding judge, the Honorable Homer T. Thornberry, instructed that petitioner "will prepare his own defense," and stand trial the following Monday morning.

After the hearing ended, petitioner was returned to the El Paso County Jail, while then former counsel deposited all of petitioner's defense material (including written statements and advisements petitioner had given counsel, and photostats of documents petioner had paid for at prior counsel's request) with the U.S. Deputy Marshal, whose office was in the Federal Building. Petitioner was told he could not take this material with him to his tank in the jail.

THIRTEENTH SPECIFIC ALLEGATION: That as a result of the court's instructions, aforesaid, petitioner was coerced by the sentencing court to accept, cooperate in, and abide by the defense of insanity or mental incompetency as his defense at the first trial on the merits, in that he was not given sufficient time to prepare a proper defense after abrupt notification he was to stand trial without counsel; that, all other factors set aside, under the conditions of petitioner's confinement it was virtually impossible for him to adequately prepare a defense in the short time allotted; that the the defense of insanity or mental incompetency was contrary to the truth, inconsistent with, and opposed to the facts responsible for petitioner's conduct in the bank on September 20, 1963; that such defense was inadequate and ineffective then and ever later and resulted in petitioner's conviction at both trials on the merits.

At a hearing held on April 21, 1964, petitioner agreed to accept and cooperate

in the defense of insanity or mental incompetency for the reasons already stated. Mr. Calamia and Mr. Rallis were reappointed by the court as petitioner's counsel.

At a hearing held on April 23, 1964, a continuance was granted counsel in which to prepare for trial.

△ INCLUDE HERE (OVER)

On May 4, 1964, the case went to trial. ✳ INCLUDE HERE (OVER)

Briefly, by prosecution testimony, the record alleges that late in the afternoon of September 20, 1963, petitioner went into the State National Bank, El Paso, Texas. He approached a lady teller and asked where traveler checks could be obtained. He was directed to another cage. Upon reaching the proper cage he asked that lady teller for one hundred dollars worth of travelers checks in ten dollar denominations. Allegedly the teller moved to get them, whereupon petitioner was alleged to have said, "Lady this is a real gun." She immediately ran, allegedly, and petitioner took several steps away from the cage, fired two shots into the wall at a height of about seven feet, not aiming at the teller, and allegedly ran out of the bank. He was followed by a uniformed police officer who was acting as a guard inside the bank (guarding a display of currency, mostly counterfeit). Petitioner was, without ######## difficulty, arrested at a time when he allegedly was about to leave in an automobile he was alleged to have left parked near the bank.

Petitioner testified in his own behalf. He denied he had really intended or attempted to rob the bank. He denied he had said, "Lady, this is a real gun," or that he had run out of the bank. One witness, the vice-president of the bank, substantiated his latter denial. Petitioner alleges this witness was about to state, "I thought it was joke," when the prosecution, having been informed of what he was going to state, jumped up immediately and objected. Petitioner was asked by his own counsel if he adhered to the communist philosophy, to communist teachings, but he declined to answer on the grounds that it might incriminate him. He contended that he did what he did in the bank not for robbery but ######## in order that he might be arrested by federal authorities. He refused to elaborate on why he wanted to be arrested ## other than to say he thought it would provide a solution, however temporary or immediate, to a problem he considered at the time to be an unbearable problem, with which he was confronted. He said that before he went to the bank he was in the process of leaving the United States permanently, by way of ######## Mexico City. He insisted that if acquitted he planned to leave, because he had had every basic constitutional right violated.

Although counsel had, prior to the trial, promised petitioner he would have F.B.I. Special Agents White, Murphy, Gorman and three other Special Agents not herein identified, subpoenaed to the trial for questioning by petitioner, he failed to do so. Mr. White was present at the prosecutor's table, but did not testify. Counsel refused to put Mr. White on the stand, despite petitioner's insistence he do so. As a matter of fact, no agents of the Federal Bureau of Investigation testified at either trial on the merits.

FOURTEENTH SPECIFIC ALLEGATION: That petitioner was intimidated by court-appointed counsel, Mr. Calamia, not to tell the whole truth at his first trial on the merits, in that he was advised during a pre-trial interview if he told "any wild tales in court like you just told me," the judge would stop the trial and he would be committed to a mental institution; that during the trial such intimidation was reiterated by counsel both inside and outside the courtroom and prevailed throughout the trial; that as a result of telling part of the truth but not the whole truth and the ######## withholding and suppression of evidence, FUNDAMENTAL, vital, and crucial to petitioner's

Reverse of page 8 of this original

Δ On May 1, 1964, three days before the trial, petitioner was visited by both counsel who attempted to persuade him to submit to an indefinite commitment to the U.S. Medical Center for Federal Prisoners in lieu of standing trial. Mr. Calomiris advised that he had spoken to the district court judge about this and that the judge said he would agree to such a commitment providing petitioner did not object. Mr. Ballis stated that petitioner was going to be tried before a "blue-ribbon jury," and that he would be convicted, because, as Mr. Ballis put it, "they'll think anybody who walks into a bank with a gun intends to rob it," or words similar and to that effect. An explanation of the coercive tactics counsel employed to convince petitioner he should submit to such a commitment in lieu of standing trial would only be repetitive and superfluous. Petitioner informed counsel that he wanted to stand trial, that he had just been found medically competent to stand trial, and that counsel knew he was "being framed."

On May 3, 1964, the day before the trial, both counsel, accompanied by an El Paso psychiatrist (Dr. Manuel Hernandez) who had examined petitioner previously, again visited the jail. Mr. Calomiris stated that he was going to hold a sanity hearing "tomorrow" and that he intended to show petitioner was not mentally competent to stand trial. Whereupon, petitioner became angry and said to Dr. Hernandez, "I thought you told me you thought I was competent to stand trial?" Dr. Hernandez replied, "You are," but that it was a matter of petitioner being sent to either a hospital or prison, and that he thought a hospital would be better. Petitioner exclaimed there was no difference between Springfield and a prison. He told Mr. Calomiris, "You can have your sanity hearing," but that he would testify and prove he was not insane. Both counsel and Dr. Hernandez then left the jail. Approximately one hour later all three returned. Whereupon, Mr. Calomiris stated to petitioner that he would not try to show that petitioner was not competent to stand trial, that he would stand trial as scheduled, but that he (Mr. Calomiris) needed petitioner's complete cooperation on the defense of insanity. Mr. Calomiris stated that they had only been "testing" petitioner.

* Immediately prior to the selection of the jury a brief sanity hearing was held at which petitioner was adjudicated mentally competent to stand trial.

rightful defense, he was convicted at said trial; that counsel, by such intimidation, denied petitioner adequate and effective legal assistance since the purpose of a jury trial is to bring out the whole truth in order that the jury itself, and only the jury, may accept it or reject it, and render a just verdict accordingly.

FIFTEENTH SPECIFIC ALLEGATION: That counsel, by asking petitioner during his testimony if he adhered to the communist philosophy, to communist teachings, without ascertaining beforehand what his answer would be, so abused standard procedure and so conceivably prejudiced petitioner's cause, as to influence the jury to return a verdict of guilty; that counsel, both during the first trial on the merits and in preparation thereof, well demonstrated his intent to raise only the issue of insanity or mental incompetency as the primary avenue of defense, when there existed in fact and to his knowledge a different and accurate primary avenue of defense, that of the truth; that counsel advised petitioner before the first trial on the merits that he did not expect to win acquittal for petitioner at said trial, but that he would win a reversal on appeal.

On May 6, 1964, petitioner was convicted by the jury on both counts of the indictment.

On May 8, 1964, petitioner was interviewed by both counsel at the El Paso County Jail. Mr. Calamia stated, "I told you, Richard, I was going to have to win this case on appeal," or words similar and to that effect. Petitioner made reference to a letter he had mailed to the court prior to the trial, in April 1964 (exact date unknown), which later was read into the record by the judge, and which requested that he be examined by a Veterans Administration psychiatrist and given an electroencephalogram (EEG) test. Petitioner also referred to Dr. Edwin A. Weinstein, a consultant in neurology and psychiatry, who conducted examinations of petitioner in 1955 when he was a patient at Walter Reed Army Hospital recovering from injuries sustained in the crash of a military aircraft. Petitioner had, on or about April 23, 1964, provided counsel with Dr. Weinstein's name and address and the information that petitioner had sufferred a negligible amount of organic brain damage as the result of a head injury received in the plane crash, plus the information that while Army medical authorities had determined such brain damage to be negligible, Dr. Weinstein thecrized it to be more serious.

Petitioner asked counsel why, if he was so bent on showing the jury that petitioner was insane, had he not arranged for the EEG test petitioner had requested, and why had he not contacted Dr. Weinstein?

Counsel answered that he thought petitioner had, at the time, been trying to prove there was "nothing wrong" with him.

Be that as it may, petitioner alleges the foregoing to be significant when, as will be seen, the element of organic brain damage was not raised until petitioner's hearing on a motion for a new trial (at which Dr. Weinstein was subpoenaed and testified), which in turn, though the motion was denied, provided substantial grounds for petitioner's first appeal.

Petitioner alleges the foregoing to be more significant when it is considered that the element of brain damage (alleged by counsel on appeal, and through coerced, perjured testimony of petitioner and perjured testimony of Mr. Pallis, to have been concealed by petitioner from counsel until after the first trial) materialized into the so-called "crucial evidence newly discovered," which became the sole grounds for the reversal of petitioner's first conviction.

Petitioner ~~also~~ alleges the foregoing to be even more significant when it is considered that later, prior to the second trial on the merits, as will be seen, intensive psychological testing and electroencephalographic examination of petitioner at the U.S. Medical Center for Federal Prisoners failed to show any evidence of brain damage.

SIXTEENTH SPECIFIC ALLEGATION: That aforementioned court-appointed counsel, by his own design and for his own purpose, neglected to initiate action which could have raised the so-called newly discovered evidence at petitioner's first trial; that if such evidence could convince the appelate court to reverse petitioner's first conviction, it also could have, conceivably, been persuasive enough to cause the first trial jury to render a verdict of acquittal (regardless of the final outcome of the brain damage theory); that counsel deliberately lied in the motion for a new trial and in his brief submitted on the first appeal, when he stated or indicated that it was petitioner who had concealed the facts leading to the "discovery" of the "new evidence"; that as a result of counsel's untruths with respect thereto, Mr. Rallis' perjured testimony at the hearing on the motion for a new trial, and petitioner's own coerced, perjured testimony at such hearing (supported by Dr. Weinstein's testimony, though in good faith), the appelate court erred in finding that the newly discovered evidence was concealed by petitioner; that if the element of brain damage had been introduced as evidence at petitioner's first trial, and had he been acquitted as a result, later on, at the hearing on the motion for a new trial, petitioner would not have been maneuvered into the position where he was coerced to perjure himself, nor would he have found it necessary before the second trial to submit to medical examination (as will be seen, through intimidation) which finally dissipated the so-called newly discovered evidence completely; that had any of the foregoing not occurred, petitioner would not now be a convicted and sentenced prisoner.

Prior to the hearing on the motion for a new trial, counsel, Mr. Calamia, inferred that if petitioner would testify that he had not mentioned Dr. Weinstein's name, the aforesaid plane crash, or the possible existence of brain damage to him until after the trial on the merits, that there would be good grounds for a reversal of petitioner's conviction on appeal. Counsel did not openly state this, but his inferrence was nevertheless obvious to any person of average intelligence. Counsel also inferred that such testimony would help block any attempts by the government to claim lack of diligence on the part of petitioner or counsel.

With this in mind, petitioner took the stand at his hearing on the motion for a new trial, held on June 7, 1964. In short, petitioner testified that he had not disclosed the "existence" of organic brain damage or anything relating thereto to counsel before his trial on the merits. Petitioner perjured himself on this account and on other matters, including an "admission" he had shot himself through the chest in a suicide attempt and that he had destroyed certain Army medical records, to indicate he was and had been mentally ill. Petitioner alleges that such testimony was in every sense of the word coereed testimony and wholly untrue.

SEVENTEENTH SPECIFIC ALLEGATION: That petitioner did, at his hearing on the motion for a new trial subsequent to conviction at the first trial on the merits, give false and perjured testimony; that such testimony was then, before, and ever later known by both court-appointed counsel to be false; that petitioner gave such perjured testimony only after coercion and the series of events already described convinced him he would not be able to obtain justice by answering counsel's questions truthfully in open court; that petitioner was unlawfully coerced into committing such perjury; that by counsel's aforementioned actions and tactics, they conducted themselves improperly as officers of the court and in violation of the canon of ethics.

The motion for a new trial was denied on June 8, 1964, and on the same date petitioner was sentenced to the maximum penalty of ten years on each count of the indictment, both terms ordered to be served concurrently, in the custody of the United States Attorney General. Thereupon, petitioner signed papers electing not to begin serving his sentence pending outcome of appeal from conviction. He was remanded to the custody of the United States Marshal and returned to the El Paso County Jail.

On or about June 14, 1964, petitioner was taken to the hospital ward of the United States Correctional Institution, La Tuna, New Mexico, by ambulance. Petitioner desires to discuss this event in some detail if and when he is granted a hearing on this petition.

A day or so later, while still confined at La Tuna, counsel (Mr. Calamia) visited petitioner, and, in the presence of Mr. Jack Graves, Deputy U.S. Marshal of El Paso, advised him he would be transferred to St. Elizabeth's Hospital in Washington, D.C., if he would sign papers electing to begin serving his sentence; that if he did so, he would not be returned to the El Paso County Jail nor would he be sent to a penitentiary or any prison until ~~and~~ and unless his conviction was affirmed on appeal. Petitioner then signed the aforementioned papers.

The following day counsel revisited petitioner, and, again, in the presence of Mr. Graves, stated that the arrangements to have him transferred to St. Elizabeth's Hospital had "fallen through," but that if petitioner would sign another set of papers electing to begin serving his sentence pending outcome of appeal, he would be transferred to the U.S. Public Health Service Hospital at Fort Worth, Texas. Counsel repeated, upon query by petitioner, that if he did so, he would not be sent to a penitentiary or any prison until and unless his conviction was affirmed on appeal. Petitioner thereupon signed the aforementioned papers.

EIGHTEENTH SPECIFIC ALLEGATION: That petitioner, after conviction at his first trial on the merits, finally signed papers electing to begin serving his sentence pending outcome of appeal, only because he had been advised by counsel that if he did so he would not be sent to a penitentiary or any prison until and unless his conviction was affirmed on appeal; that counsel gave such advice knowing it ~~p~~ to be misleading, unworthy, and false; that such action by counsel constituted a usurpation and encroachment on petitioner's rights under the law existing at that time.

On June 19, 1964, petitioner was transported by automobile to the U.S. Public Health Service Hospital, Fort Worth, Texas, a hospital and place of confinement reserved primarily for narcotics-law offenders, where he was incarcerated for thirty-three days.

NINETEENTH SPECIFIC ALLEGATION: That while confined at the aforesaid institution, petitioner was subjected to questioning, involuntarily, about the offense for which he stood convicted, the defense raised at his trial, his true defense against the crime charged, and matters relating to his appeal from conviction then being prepared; that when petitioner refused to answer some of the questions put to him, he was subjected to duress in that he was told if he did not cooperate in answering all questions he would most likely be sent to a penitentiary.

On July 22, 1964, petitioner was transported by automobile to the United States Penitentiary, Leavenworth, Kansas, where he remained incarcerated until February 15, 1966.

TWENTIETH SPECIFIC ALLEGATION: That while confined at the aforesaid institution, petitioner, a federal prisoner then awaiting outcome of appeal from conviction, was subjected to questioning in the prison hospital during the months of July and August 1964 and November and December 1964 about the crime for which he stood convicted, the defense raised at his trial, his true defense against the crime charged, and matters relating to his appeal from conviction, military service and political views; that he was subjected to such questioning involuntarily and against his will; that when petitioner refused to answer any and all of the questions aforesaid, he was subjected to coercion, duress and cruel and unusual punishments; that on one occasion he was stripped naked and made to lie and sleep on a tile floor for ten days, without just cause; that during such period he was purposefully exposed to view of prison homosexuals and subjected to their ridicule; that during such period he was never permitted to wash any part of his body or perform other necessities of personal hygiene; that during such period his toilet was flushed once a day and he was never provided with any toilet paper; that during such period he was asked every day if he was ready to talk; that during such period he was not furnished an adequate supply of water to drink; that subsequent to the aforedescribed ten day period, he was removed from the prison hospital and placed in solitary confinement in Building # 63 at the penitentiary; that later, in December 1964, petitioner was asked the same questions again, and again he refused to answer them; that as a result he was forcibly administered a dangerous drug, without medical examination beforehand; that such drug was administered unitl his physical condition commanded it be stopped; that as a direct result of the administration of such drug, petitioner's life, mental health, and physical well-being was placed in jeopardy; that petitioner's letters to his counsel and a physician-consultant to the Walter Reed Army Institute of Research complaining in the aforesaid regard, were destroyed in petitioner's presence by Mr. Charles E. Harris, an associate warded of the penitentiary; that as a result of the punishments referenced, and soley because of such punishments, petitioner "cooperated" in answering some of the questions put to him; that as a consequence of answering certain questions pertaining to his mental status, petitioner revealed evidence which was later used against him at his second trial on the merits; that by the foregoing, in part and as a whole, petitioner was compelled to be a witness against himself at such trial.

P Petitioner's appeal from his first conviction was filed on November 2, 1964 in the United States Court of Appeals for the Fifth Circuit, New Orleans. It was heard at Houston, Texas, on December 2, 1965, and, by the appelate court's opinion dated January 4, 1966, petitioner's first conviction was reversed with instructions that a new trial be granted.

Seven grounds were raised in support of reversal by court-appointed counsel. Six of them were "confidently rejected." The seventh ground, contending that a new trial should have been granted on account of crucial evidence newly discovered (that of "serious organic brain damage"), was sustained.

The court's opinion held that such evidence "was unknown to the trial judge or defense attorneys until after the trial." It held that such evidence was concealed by petitioner "as the result of a damaged brain and diseased mind." The opinion also stated: "The former valiant soldier who had sustained wounds on three occasions in defense of his country had become so completely altered that he announced himself in open court to be a Communist. He had made one serious effort to kill himself by a shot in the left chest."

TWENTY-FIRST SPECIFIC ALLEGATION: That despite petitioner's continuous and repeated requests to counsel, and offers to pay costs for the same, he was never before or after filing of the appeal, furnished or permitted to see a copy of the appeal brief submitted in his behalf; that the appelate court's opinion vividly indicates such brief was pervaded with a conglomeration of truths, half-truths and outright falsities; that they were known to be such by counsel; that petitioner's own coerced, perjured testimony at the hearing on the motion for a new trial, and Mr. Rallis' perjured testimony at such hearing, was heavily relied upon by the appelate court in formulating its opinion; that had other evidence crucial to petitioner's rightful defense not been withheld or suppressed at his trial or at the hearing on the motion for a new trial, it would have been made available to the appelate court via the sentencing court's record; that had the truth been raised even after petitioner's first conviction, the appelate court may very well have reversed his conviction without remanding him for another trial; that by the foregoing the appelate court's reversal of his first conviction merely paved the way for petitioner's second conviction and present detention.

On February 15, 1966, petitioner was released from Leavenworth Penitentiary and returned to the El Paso County Jail.

On February 25, 1966, petitioner mailed a letter to the court requesting relief of court-appointed counsel and permission to act as his own counsel at all future legal proceedings, until he could make arrangements to retain qualified counsel to represent him. He received no answer from the court.

On February 28, 1966, counsel (Mr. Calamia) visited petitioner at the jail and stated he was making arrangements to have petitioner committed to a Veterans Hospital, that if petitioner would agree to a voluntary commitment the government would dismiss the charges pending against him. Petitioner replied he would agree to this if he could receive assurance the charges would be dropped after the commitment.

On March 1, 1966, Mr. Calamia, accompanied by a Mr. Escobar, another El Paso Attorney, who identified himself verbally as being a representative of the Veterans Administration in El Paso, visited petitioner. The substance of this interview was that both counsel and Mr. Escobar attempted to persuade petitioner to agree to a voluntary commitment to a V.A. hospital in lieu of standing trial again. Petitioner advised he would submit to no commitment "with charges hanging over my head."

On March 2, 1966, petitioner, as a precaution, wrote and mailed another letter to the court requesting relief of counsel and permission to act in his own behalf at any future legal proceeding, until he could make arrangements to retain counsel of his own choosing. He received no answer from the court.

On March 7, March 8, and March 14, 1966, counsel visited petitioner, attempting to persuade him to submit to a commitment to a V.A. hospital. Mr. Calamia stated that the government would not dismiss the charges against petitioner until after he was committed, and petitioner refused to agree to a commitment unless he received some assurance "besides your word" that the charges would indeed be dismissed after he did so.

On March 16, 1966, petitioner wrote and mailed a rather lengthy letter to the court which pertained to his situation and complaints and what can best be described as a "deal" offered to him by the government via court-appointed counsel, and petitioner's response thereto. He received no answer from the court.

On March 18, 1966, Mr. Jack Graves, Deputy U.S. Marshal, visited petitioner and attempted to persuade him to submit to a commitment to a V.A. hospital in lieu of standing trial. Petitioner, not receiving any valid assurance that the charges would be dismissed after such commitment, refused to agree to do so.

On March 28, 1966, Mr. Tony Enriques, Deputy U.S. Marshal, attempted for over one hour to persuade petitioner to submit to a voluntary commitment to a V.A. hospital in lieu of standing trial. Petitioner, not receiving any valid assurance that the charges would be dismissed after such commitment, refused to agree to do so.

On April 4, 1966, petitioner wrote and mailed a letter to Mr. Harry L. Hudspeth, Assistant United States Attorney at El Paso, advising him that counsel's further representation of him (petitioner) was without his authorization, and also mentioning that his reply to the government's proposal relayed by counsel was contained in his letter to the court dated March 16, 1966.

The following day petitioner received an answer from Mr. Hudspeth, dated also on April 4, 1966, which advised that relief of counsel was a matter for the court to decide upon.

On April 7, 1966, three months after the appelate court's reversal of petitioner's conviction, a hearing was held in which the court again ordered petitioner committed to the U.S. Medical Center for Federal Prisoners for a period of psychiatric observation to determine his mental competency to stand trial. At this hearing petitioner brought up the subject of his three letters to the court requesting relief of appointed counsel. When the presiding judge stated he had not received petitioner's letters dated February 25, 1966 and March 2, 1966, petitioner produced carbon copies of these letters and gave them to the court. Petitioner stated that his sister was in the process of making arrangements for him to be represented by qualified counsel, retained at her ~~FFF~~ expense; that she had already talked to an attorney concerning such representation.

Thereupon, the judge, the Honorable Dorwin W. Suttle, instructed that any attorneys retained by petitioner or his sister would have to act under the supervision of court-appointed counsel.

It was after these instructions that the court ordered petitioner's aforementioned commitment. Both counsel were present. When asked by the court if he had any comment to make, Mr. Calamia replied that under the circumstances he had no comment to make. Mr. Rallis also stated he had no comment to make. The Assistant U.S. Attorney, either Mr. Jaime Boyd or Mr. Harry L. Hudspeth, also stated he had no comment to make when queried by the court. Petitioner then asked the court if he could say something in his own behalf. The judge replied, "This court doesn't want to hear anything you have to say, Mr. Nagell," or words similar and to that effect. Thereupon, petitioner became angry and stated, "This is a mockery of justice," at which time the court ordered the Deputy U.S. Marshal to escort petitioner from the courtroom.

TWENTY-SECOND SPECIFIC ALLEGATION (HELD ON APRIL 7 1966): That petitioner was not allowed to be present during a closed hearing at which matters bearing on his defense, case and custody were discussed by the aforenamed judge, the Assistant United States Attorneys, and court-appointed counsel; that in the light of the circumstances alleged thus far, petitioner should have been permitted attendence at such hearing; that at the hearing which was held in open court, petitioner was denied the ~~inherent and~~ lawful right to speak in his own behalf, notwithstanding counsel's refusal to speak for him; that

the foregoing was a usurpation of petitioner's right to question and protest action which would continue his detention and bar him from a speedy trial, in that petitioner was not earlier, then, or ever later found to be mentally incompetent or incapable of acting or assisting in his own defense; that the foregoing constituted an abolition of petitioner's right to seek relief from the very court which had the responsibility of protecting that right; that the court's commitment, on its own or any other motion, was effected in the face of then recent documentary evidence furnished the court by competent medical authority that petitioner was mentally competent to stand trial; that by all of the foregoing, and by evidence which will be produced at any hearing on this petition, petitioner's safeguards under the law were flagrantly abused and he was, as a result, denied a speedy trial.

TWENTY-THIRD SPECIFIC ALLEGATION: That the court's instructions issued on April 7, 1966, ordering that any attorney retained by petitioner or his sister would have to act under the supervision of court-appointed counsel, was unlawful; that such instructions had the ultimate effect of preventing petitioner and his relatives from finding qualified ~~and effective~~ counsel who would accept his case under those conditions; that the attorney originally contemplated for retention by petitioner through his relatives was and is a lawyer in good standing with the State Bar of Texas, admitted to practice law before the federal bench of the sentencing court; that retaining of such counsel would have been at the expense of petitioner's relatives; that the court's instructions denied petitioner the right to effective legal representation then and ever later, at his second trial on the merits, on appeal therefrom, and continuing to the present time.

On April 9, 1966, the date petitioner was to be transported to the U. S. Medical Center for Federal Prisoners, he barricaded himself in his jail cell and refused to come out. He threatened to kill himself if anyone attempted to force their way in.

On April 18, 1966, petitioner came out of his cell at the instance of Mr. Jesse Dobbs, Chief United States Marshal for the Western District of Texas. Petitioner alleges certain promises were made to him by Mr. Dobbs, in the name of the judge of the sentencing court, which were not kept.

On April 19, 1966, Mr. Dobbs, in the presence of Deputy U.S. Marshal Jim Johnson, stated substantially the following to petitioner: That he had just finished talking to Judge Suttle, who he said was a longtime friend of his, and the judge had told him to tell petitioner that if he would cooperate with the doctors at Springfield, and submit to all of the examinations they requested of him, and that if it was determined by them that petitioner was not mentally competent at the time of the alleged offense, either he would not be brought to trial, or, if the evidence dictated he should stand trial, he would not be convicted. Mr. Dobbs inferred that the judge would direct a verdict of acquittal under these circumstances. He added that if petitioner was found to be mentally competent at the time of the alleged offense, and if he was convicted, that petitioner would not be sent to prison, because, as Mr. Dobbs expressed it, "he doesn't feel you belong in prison." Mr. Dobbs blatantly inferred petitioner would be placed on probation if convicted.

On the same day, April 19, 1966, counsel (Mr. Calamia) visited petitioner and requested that petitioner cooperate "fully" with the medical authorities at Springfield. Petitioner then remarked to counsel that there was a danger of "your newly discovered evidence vanishing into thin air" if examination at Springfield failed to disclose the existence of brain damage. Whereupon, counsel stated that it was wrong for petitioner to be placed in a spot where the government could "search our evidence," but that there was nothing he could do about it.

On April 22, 1966, petitioner entered the U. S. Medical Center for Federal Prisoners for the second time, where he remained until July 9, 1966. Initially, petitioner refused to undergo any examinations requested of him by the medical authorities at Springfield. In a letter to counsel, Mr. Calamia, he mentioned the tests and examinations the doctors wanted him to take. He referenced the element of organic brain damage, and that any findings in regard thereto would automatically be furnished the United States Attorney (the prosecution). Petitioner wrote that this would constitute a search by the government of evidence raised by the defense. He indicated, for reasons well known to counsel, that he did not feel he could safely take the tests under these conditions. The [illegible] emphasis and explanation petitioner put on this would only add to what must necessarily be a length supporting memorandum. Petitioner also informed the Chief Psychiatrist at the Medical Center of his reasons for not wanting to submit to the examinations, and that he knew they would reveal negligible, if any, brain damage.

Shortly thereafter, petitioner received a letter from counsel which stated that if he did not cooperate with the doctors and take all of the examinations they requested of him, the court could issue an order that he remain there until he did.

Thereupon, petitioner agreed to undergo all examinations requested of him by the medical authorities, including an EEG test, Skull X-Rays, and a series of psychological tests.

TWENTY-FOURTH SPECIFIC ALLEGATION: That petitioner cooperated in taking a series of psychological tests and an electroencephalographic (EEG) test and Skull X-Rays out of fear that the court would order him to remain at the U. S. Medical Center for Federal Prisoners until he did; that such fear was based on the contents of the aforesaid letter received from counsel; that counsel's letter was patently intimidating and coercive; that as the result of submitting to the aforesaid series of psychological tests and the EEG test, no evidence of brain damage was discovered; that such finding was included in a report of psychiatric examination, a copy of which was furnished the United States Attorney prosecuting petitioner's case; that such finding was used as evidence by the prosecution against petitioner at his second trial on the merits; that such evidence was instrumental in dissipating the so-called "newly discovered evidence" raised by the defense as a crucial issue at the second trial on the merits; that the dissipation of such evidence was a decisive factor in procuring the conviction of petitioner at said trial; that by the foregoing, in part and as a whole, petitioner was compelled to be a witness against himself at his second trial on the merits.

On or about July 9, 1966, petitioner departed the U. S. Medical Center for Federal Prisoners. He was returned to El Paso via a circuitous route, and with some delay. While enroute, and on a stopover at the Bexar County Jail, San Antonio, Texas, he was attacked, struck in the head, and injured without provocation or just cause by Mr. R. P. Caballero, a uniformed deputy sheriff of the Bexar County Sheriffs Department, on duty in the jail. The attack took place on July 11, 1966, and was witnessed by a number of persons not herein identified; later, his injuries were examined by a number of persons not herein identified. Petitioner, after the assault and battery, aforesaid, was then taken to a room out of view of witnesses and threatened and assaulted and manhandled by Mr. M.S. Trump, a deputy sheriff of the Bexar County Sheriffs Department, then wearing civilian clothes. Petitioner was thereafter, on the same date, placed in solitary confinement. He was refused medical examination or treatment. Later, the same day, he was visited by Acting Chief Deputy [illegible] U.S. Marshal Jack Graves who ordered petitioner be removed to the jail's hospital ward after petitioner complained of the swelling on his forehead and told him what had

transpired. Mr. Graves told petitioner to take it easy, that "we are doing our best to get you into a state hospital so you won't have to stand trial," or words similar and to that effect. Whereupon, petitioner exclaimed he did not want to enter a state hospital, that he wanted to go to trial, that he had just been found mentally competent to stand trial, and that if anybody tried to have him committed to a state hospital he was going to fight it all the way.

Despite his repeated requests, petitioner received no medical examination or treatment whatsoever until two days later, even though he was in the jail's hospital ward and even though a nurse, Miss Billie Boyce, was on duty during the daytime. He was in fact held incommunicado during the period July 11, 1966 through July 15, 1966, in that he was not permitted to phone any attorney or contact his relatives. When the jail doctor, a Dr. Rickelson, finally examined him (through the bars of his cell, and by shining a flashlight in his face), petitioner could barely see out of his left eye and the swelling on his forehead had increased considerably. Later, petitioner was given two aspirins by a trusty.

On July 14, 1966, Mr. Jesse Potts, the Chief United States Marshal for the Western District of Texas, visited petitioner, and, in the presence of Bexar County Deputy Sheriff E. E. Hummel and another person not herein identified, told petitioner to forget about what had happened "here," that "we're going to get you to a state hospital," or words similar and to that effect. Whereupon, petitioner gave him substantially the same answer he had given Mr. Graves three days before.

On July 16, 1966, petitioner was transported by automobile to the El Paso County Jail.

On July 21, 1964, counsel, Mr. Coleman, visited petitioner. Petitioner desired to know what had taken him "so long to get here," that he had asked to see him immediately upon his arrival at the jail, and that he had been "sold over" at San Antonio. Petitioner then advised counsel of what had occurred in the Bexar County jail. He insisted that counsel make arrangements for him to file criminal complaints against Mr. R. F. Castillow, Mr. M. S. Trump and the Bexar County jail Captain, Mr. Adrian S. Joseph. Also, he informed counsel of what Mr. Grace and Mr. Wolfe had stated to him at San Antonio, and his response thereto. Counsel evaded answering petitioner's questions and seemed to pay little attention to his complaints and requests. He said the government intended to dismiss the charges against petitioner and file a motion that he be committed civilly by state authorities to a Texas state mental institution, and that there was nothing he could do about it. He advised that petitioner not oppose the commitment. Thereupon, petitioner became angry and told counsel he was still representing him without his authorization and against his will, that he had just been found mentally competent to stand trial, that there was already an undue delay in bringing him to trial, and that if there ever had existed any real doubt about his competency to stand trial, it should have been resolved long before he was sent to Springfield in April. Petitioner stated that counsel and the court and the prosecution "knew damn well" he had been found mentally competent to stand trial before he was sent to Springfield; that he had been determined mentally competent to stand trial before he had been released from hospitalization; and that all concerned had been furnished a medical report to that effect. Petitioner explained to counsel that his conviction had been reversed with instructions that a new trial be granted over six months earlier, and that

he was being denied a speedy trial. He stated that "come hell or high water" he was going to stand trial even if he had "to rot in jail," and that "the truth is going to come out." He told counsel he intended to oppose any attempt by the State of Texas to step into the case and commit him to a state hospital, and that his sister would hire an attorney specifically for that purpose. Whereupon, Mr. Calamia became angry and stated that the court's order of April 7, 1966, was still in effect and that he would not allow another attorney to oppose the commitment.

On July 22, 1966, petitioner was visited by counsel, Mr. Calamia, and two F.B.I. agents, Mr. Richard H. Bickon and Mr. Robert D. Abeyton. Later in the day petitioner gave these agents a signed statement concerning the incidents at the Bexar County Jail and the names of the persons involved, including the names of some (but not all) witnesses. On advice of Mr. Bickon, no reference to Mr. Wolfe or his comments to petitioner were made in the statement. Petitioner was assured that if the claims proved true, the U.S. Attorney would take appropriate action, because there had been other complaints about the treatment of prisoners "in that jail." Mr. Bickon said that the matter would be investigated by the San Antonio Office of the F.B.I. Petitioner was never apprised of the results, if any, of the investigation, nor was he ever questioned further on the matter.

On July 24, 1966, Dr. Joseph P. Hornisher, a psychiatrist employed part-time by El Paso County, visited petitioner and attempted to persuade him to sign a statement showing that he would voluntarily agree to a civil commitment to a Texas state hospital. Petitioner refused to talk to Dr. Hornisher outside of the presence of counsel, and he refused to sign the aforesaid statement. Whereupon, Dr. Hornisher shouted in the presence of El Paso County Sheriff Joe Burns and other persons not herein identified, "You don't think you're going to beat this rap, do you?" or

words similar and to that effect.

On July 25, 1966, petitioner wrote a note to Mr. Raymond O'Rourke, Captain of the Jail Division, El Paso County Sheriff's Department, citing his stand in the matter aforesaid, and mentioning that he did not wish to speak to Dr. Hernsher again if he should visit the jail.

On July 27, 1966, petitioner received a letter from counsel, Mr. Calamia (dated July 27, 1966), stating that the United States Attorney at El Paso had advised him the charges pending against petitioner would be dismissed. Earlier, counsel had advised petitioner he would be taken to the El Paso County Court after the charges were dismissed, and committed to a state hospital.

On the same date, July 27, 1966, petitioner wrote a lengthy letter to the Honorable T. C. Johnson, presiding judge of the El Paso County Court, who handled civil commitments, telling him of his stand in the matter aforesaid, that he intended to oppose any such commitment, and that he had just been found mentally competent to stand trial at the U. S. Medical Center for Federal Prisoners. Petitioner received no answer to his letter, but he was told by Captain O'Rourke that it had been delivered to the judge and that the judge had read it.

On August 1, 1966, counsel, Mr. Calamia, visited petitioner and interviewed him in Captain O'Rourke's office, in the presence of Captain O'Rourke. Counsel bitterly warned petitioner, repeatedly, and emphasized that if he stood trial again in El Paso he would be convicted. He said there was absolutely no chance of him winning an acquittal for petitioner because of the prejudice that prevailed against petitioner "in this area." Counsel advised that instead of standing trial petitioner should allow himself to be committed to a state hospital. Counsel said he would, after such commitment, arrange to have petitioner transferred to a Veterans

Administration hospital. Captain O'Rourke interrupted to mention that he thought petitioner was convicted at his first trial because of "the Kennedy assassination." Petitioner again refused to agree to submit to any such commitment. He said that since it appeared he was "stripped to" counsel, he wanted a change of venue because of what counsel had stated about him being convicted on prejudice if he stood trial in El Paso. Whereupon, counsel said he did not think he could obtain a change of venue. Petitioner insisted that he try. Counsel flatly refused to make application for a change of venue. He threatened that if petitioner persisted in not following his advice, he would "end up back in Springfield." Counsel said, "How would you like that?" Petitioner then asked Captain O'Rourke to remember what counsel had stated throughout the interview, and walked out of the office.

The following day, August 2, 1966, counsel, Mr. Coleman, again visited petitioner and interviewed him in Captain O'Rourke's office in Captain O'Rourke's presence. Again, he warned repeatedly and emphasized that petitioner would be convicted if he stood trial in El Paso. ~~He~~ Again, he flatly refused to ask for a change of venue. He said that if petitioner did not follow his advice and submit to a commitment in a state hospital, the judge was going to send him back to Springfield for "not cooperating." Petitioner became angry and stated that counsel was threatening him. Counsel replied that he was not threatening, that he was "promising." And, again, petitioner asked Captain O'Rourke to remember what counsel had said throughout the interview. When counsel had departed the jail, Captain O'Rourke called petitioner aside and told him, "I sure hate to see you get fucked around like that," or words similar.

(4) "The patient is judged to be competent to stand trial. He knows what he is accused of and can account for his movements and he knows that the court views the act as a crime no matter what his own views may be. He further knows in some realistic measure the kind of trouble he can get into if found guilty, and, finally, it is felt that he can cooperate with and assist counsel within reasonable limits (emphasis added). His memories in excess of Nagil's history of failure to cooperate in the past. However, the type of cooperation that he has displayed during his present hospitalization at the U. S. Medical Center resolve any doubt I may have had on this score."

(5) "The electroencephalographic report indicated that it was within limits of normal variation."

(6) "Psychological testing failed to show any evidence of an active psychotic process or show any evidence of an impairment suggestive of a cortical brain damage."

(7) "I can point out that on the basis of my examination and my laboratory findings including an EEG and psychological testing that I did not find any evidence of finding suggestive of brain damage."

(8) "The final paragraph of the psychological report states that little or nothing would be gained for society or for Nagil by continued incarceration in a penal institution."

(9) "RECOMMENDATIONS: As indicated above, Nagil displays some manifestations of a personality pattern disturbance which, if he is to be rehabilitated and achieve some degree of adjustment in life, would seem to indicate some type of out-patient psychiatric treatment such as long-term psychiatric therapy (emphasis added)."

TWENTY-FIFTH SPECIFIC ALLEGATION (CONTINUED): That the foregoing excerpts listed as (1), (4) and (9) should be considered when evaluating the attempts by the government and court-appointed counsel to have petitioner committed to a state mental institution in lieu of standing trial; that excerpts (2) and (3) should be considered specifically in the light of the sentencing judge's purported promises to petitioner, as alleged to petitioner on April 19, 1966, by Chief U.S. District Judge [illegible]; that excerpts (5), (6) and (7) should be considered when weighing all allegations herein pertaining to the "brain damage" issue; that excerpt (3) should be considered in the light of petitioner's sentence to the maximum penalty of the law, his incarceration in Leavenworth Penitentiary, and his continued denial of parole.

TWENTY-SIXTH SPECIFIC ALLEGATION: That on July 29, 1966, the government, in collusion with court-appointed counsel, and for wrongful purposes, made a motion before the sentencing court to dismiss the charges pending against petitioner and have him committed by Texas state authorities to a Texas state mental institution in lieu of standing trial; that such action by the government was initiated in the face of its acquiescence of a then recent psychiatric report submitted on petitioner which supported a judicial determination of his competency to stand trial and ~~sentenced~~ contained an expert medical opinion of six psychiatrists that he was mentally competent to stand trial; that such action by the government was initiated for the express purpose of having petitioner from testifying at his trial and for impugning testimony he might give in the future regarding the government's withholding of evidence favorable to his rightful defense and ~~contempt~~ a conspiracy to murder a former Chief Executive of the United States; that when the government's motion was denied on July 29, 1966, petitioner began to be intimidated and coerced by his court-appointed

counsel to submit to a civil commitment in a Texas state hospital in lieu of standing trial; that petitioner was told by counsel if he would agree to such a commitment the judge would not require that he stand trial; that such intimidation and coercion (added to preceding general allegations) were with wrongful purpose and were effected with the knowledge and encouragement of the government and others not herein identified; that such actions by counsel were omniscient and demonstrative of indigency, ineffectiveness and misconduct on the part of counsel, in that petitioner was explained the stand he stood and that the simple right to stand trial for the offense charged against him; that counsel's actions, abetted by the government, during the period July 29, 1966 through August 16, 1966, and prior thereto and thereafter, caused undue mental anguish and hardships on petitioner and his relatives; that by all the foregoing and the facts contained in other related allegations, and by additional evidence which will be produced at any hearing on this cause, the government in collusion with court-appointed counsel unlawfully arrayed petitioner's right of due process and denied him of a speedy trial.

TWENTY-SEVENTH SPECIFIC ALLEGATION: That counsel, Mr. Cairns, of design and for his own purposes, so for purpose commonwealth petitioner, denied petitioner the lawful right to seek a change of venue for the second trial on the merits; that had such change of venue been applied for and granted, petitioner would have stood trial in another district and likely convicted might have been acquitted; that had such change of venue been applied for and denied, petitioner cannot, under the circumstances alleged by counsel and others, have been provided additional and substantial grounds upon which to base an appeal from conviction.

On August 17, 1964, both counsel again visited petitioner. Mr. Colemia said that the judge was not going to wait any longer for petitioner to change his mind, that the case was called for September 19, 1964, and that he would cease his efforts to have petitioner "accept commitment" in a state hospital. He stated he would see petitioner's case "through to the end" if she would cooperate in the defense of insanity. Petitioner understood this statement to mean counsel would again appeal if she was convicted. Mr. Colemia said there was the possibility she could win an acquittal if he could show the jury that petitioner was presently insane. Petitioner replied that if counsel tried to do that he would not cooperate at all, that she would personally object to the introduction of such an issue. Whereupon, after much argument, counsel agreed not to pursue this proposed aspect of the defense. He stated that he would only prove that petitioner was insane at the time of the alleged offense. Petitioner insisted that counsel attempt to have the Springfield psychiatric reports admitted into evidence. After counsel had advised that she did not think she could get them introduced, "because the government will object." Petitioner asked why the government would object to "its own evidence" being shown the jury. Counsel said he could not afford to permit petitioner to testify, that she was "too convincing and might destroy your defense," or words similar and to that effect. Petitioner answered that she surely intended to testify and that for once she was going to see that the truth came out. She said she was also going to testify about the "screwing around" she felt she had been getting for three years. Whereupon, counsel became incensed and said that if petitioner testified to "anything the judge doesn't like" that he (the judge) would stop the trial and send petitioner back to Springfield. Whereupon, petitioner became angry and told counsel that she was through with

again, that counsel wanted to win his case alright, but that he wanted to win it on the prosecution's terms. Petitioner said, "I'm not going to go along with the program," that as far as he was concerned counsel had been "sleeping with the U.S. Attorney" ever since the initial petitioner's case. He said that "you people" stuffed the defense of insanity down "my throat" before his first trial and that "come hell or high water" he was going to tell the truth at his second trial. Counsel replied that petitioner was cutting off his nose to spite his face. He asked petitioner if he wanted to end up back in Leavenworth.

On August 21, 1964, petitioner wrote a letter to Judge Scuttle of the sentencing court, describing his situation in detail and complaining of counsel's conduct. The letter was mailed on August 24, 1964, and petitioner received an acknowledgment of receipt from the Court Clerk, but no answer to his letter.

Meanwhile, petitioner had written to his sister and requested that she visit him. On September 7, 1964, she and her husband visited him in the El Paso County Jail. Petitioner advised them that it looked like he was going "to be railroaded again." He gave his sister a hand-written dissertation, perhaps thirty pages in length, containing part of his "proposed testimony," and said that it was academic that he had not finished it because he knew "they're not going to let me testify." He explained his situation to her in detail.

The second trial in the matter began on September 19, 1966. Immediately prior thereto, a brief sanity hearing was held at which the court reinstated petitioner mentally competent to stand trial. After the trial got underway, the government elected to try petitioner on one count only of the indictment, that of "entering the bank with intent to commit a felony." Petitioner alleges that during the presentation of the government's case, it was never clearly spelled out to the jury what this felony was supposed to be; that on the merits of the issues it may very well have consisted of something other than intent to rob travelers checks. Petitioner also alleges that the jury was never informed that the discharging of a firearm on property subject to federal jurisdiction was not a felony, and that it should have been so informed. Petitioner further alleges that throughout the trial, the jury, having heard both counts of the indictment read, was led to believe that he was being tried for both "intent" and "attempt", and that it was not informed until the moment it was charged that he was in fact being tried only for "intent."

Though intimidation and coercion by court-appointed counsel and others was again certified, petitioner did not testify. Nor did any F.B.I. agents testify, despite counsel's promise to petitioner that Mr. Thomas H. White, Jr., and Mr. Edward J. Hickey would be put on the stand, and that they would be questioned about certain of petitioner's allegations.

Again, the defense raised was insanity or mental incompetency, and it was raised against petitioner's will. Despite petitioner's insistence to counsel, and counsel's promise that he would do so, no attempt whatsoever was made to have the Springfield psychiatric reports admitted into evidence. Petitioner alleges that it was vital to the defense raised that such reports be considered by the jury during deliberation, because the determining factor for criminal responsibility as used by the court itself was clearly outlined in both reports. Petitioner also alleges that the well-grounded rumor that

~~petitioner~~ he was a communist was disputed and precisely answered in the psychiatric reports aforementioned, and that testimony by defense witnesses did not touch upon the subject. Petitioner alleges, on basis of the multi-faceted rumor that he was a communist and other related and prejudicial issues raised by the news media throughout the year preceding this second trial on the merits, that the rumor and prejudicial issues were material to this cause and should have been argued in open court and settled once and for all; for it is, petitioner alleges, naive to think that such rumor and issue did not hang heavily in the minds of the jurors. For this reason, petitioner alleges that while the issue of "communism" was successfully suppressed by both the prosecution and the defense (against petitioner's will) from the trial record, it was not blotted from the minds of the jurors, and that, as will be seen, an impaired comment by a prosecution witness did in fact raise the issue once again during the trial without objection or instruction by trial appointed counsel.

The jury was charged on September 22, 1966, and four days later it returned a verdict of guilty.

TWENTY-EIGHTH SPECIFIC ALLEGATION: That petitioner was not brought to trial until over eight months past the date that the appellate court instructed a new trial be granted; that at the time of petitioner's release from Leavenworth Penitentiary and return to El Paso in February 1966, it had already been determined by competent and principal medical authority that petitioner was mentally competent to stand trial, that an official report of this expert medical opinion was submitted to the court on or about February 17, 1966; that by the aforesaid and the facts contained in the general and specific allegations preceding this one, and by additional evidence which could be presented at any hearing on this petition, petitioner was denied a speedy trial.

TWENTY-NINTH SPECIFIC ALLEGATION: That certain members of the jury at the second trial on the merits, had accurate in the book in which petitioner was alleged to have intended to commit a felony; that no substantial inquiry was conducted into this matter by the presiding judge when he questioned the jury panel and/or the selected members of the jury; that over petitioner's ~~subsequent~~ protest to court-appointed counsel, counsel offered no objection whatsoever to having such persons sit on the jury, nor did he question the jury panel or the selected members of the jury at all on this matter, nor did he utilize any peremptory or other challenge to bar such persons from serving on the jury; that although almost every juror claimed they had heard about petitioner's case from various sources, and despite the fact petitioner's alleged political views were and had been well-circulated throughout El Paso and vicinity, neither the presiding judge nor court-appointed counsel conducted any inquiry of the jury panel or the selected members of the jury to ascertain whether such alleged political views would influence their ability to render a just verdict; that by the foregoing, in part or as a whole, and by other evidence and testimony which will be presented at any hearing on this petition, there existed discrimination in the selection of the jury at petitioner's second trial on the merits.

THIRTIETH SPECIFIC ALLEGATION: That through intimidation and coercion by court-appointed counsel and others not herein identified, petitioner was forced to accept, cooperate in, and abide by the defense of insanity or mental incompetency at his second trial on the merits; that such defense was contrary and repugnant to the truth and inconsistent with and opposed to the facts in this cause; that by the foregoing, in part or as a whole, petitioner was deprived of a fair and impartial trial.

THIRTY-FIRST SPECIFIC ALLEGATION: That through intimidation and coercion by court-appointed counsel and others not herein identified, and as a result of such intimidation and coercion, petitioner did not testify at the second trial on the merits; that evidence fundamental, vital and crucial to petitioner's rightful defense against the crime alleged was withheld and/or suppressed, against petitioner's will, by the Federal Bureau of Investigation, another agency of the United States Government not herein identified, and court-appointed counsel before and at the second trial on the merits; that by the foregoing, in part or as a whole, petitioner was precluded from telling the truth in his cause, and was deprived of a fair and impartial trial.

THIRTY-SECOND SPECIFIC ALLEGATION: That through intimidation effected by court-appointed counsel and through coercion of others not herein identified, and as a result of such intimidation and coercion, petitioner did not ask the court before the second trial on the merits to subpoena certain witnesses and records crucial to his rightful defense against the crime alleged; that by the foregoing, in part or as a whole, petitioner was denied the right to subpoena witnesses and records in his favor.

THIRTY-THIRD SPECIFIC ALLEGATION: That false and misleading statements were admitted into evidence by the court at the instance of court-appointed counsel; that counsel knew then, before, and ever since, that such testimony was untrue; that false and misleading documentation was admitted into evidence by the court at the instance of court-appointed counsel; that counsel knew then, before, and ever since that such documentation was misleading and not representative of what it contained purported to depict; that counsel's actions in requesting the court to admit the aforementioned into evidence was prejudicial on [his] behalf in that the

defense of insanity or mental incompetency; that petitioner himself explained to counsel and another person not herein identified, before the second trial on the merits, that the aforesaid documentation was spurious and misleading and what its contents actually represented; that petitioner told counsel and another person not herein identified, before the second trial on the merits, that under no circumstances or for any reason did he want the aforesaid documentation introduced into evidence; that by the foregoing, in part, petitioner's right to the false and misleading documentation from the eyes of the jury was surveyed by court-appointed counsel.

THIRTY-FOURTH SPECIFIC ALLEGATION: That a prosecution witness, El Paso Police Officer James Burdon, perjured himself when testifying for the government at the second trial on the merits when he stated "I saw photographs of restricted military installations" on petitioner's belongings at the time of his arrest; that the prosecution and Mr. Burdon knew such testimony to be false; that such testimony was highly inflammatory and unduly prejudicial to petitioner; that counsel made no objection whatsoever to the introduction of such testimony; that counsel offered no substantial context to dispute or refute such testimony on direct or cross-examination; that counsel did in fact emphasize this perjured testimony to the jury during his feeble context on cross-examination; that petitioner himself could have disputed such testimony had he been permitted to testify; that an F.B.I. agent present in the federal building could have refuted such testimony had he been called as a witness; that another person not herein identified who was present in the courtroom could have refuted such testimony; that another person available nearby who could have refuted such testimony and who was willing to take the stand on petitioner's behalf, was not called as a witness despite petitioner's insistence to counsel that he be so called; that by the foregoing, coupled with the rumors that petitioner was a communist, the prejudicial aura of "espionage"

was sneaked into the trial by the government without challenge or serious contest by the defense, and left hanging in an already contaminated atmosphere.

THIRTY-FIFTH SPECIFIC ALLEGATION: That court-appointed counsel, by propounding a calumnious and leading question on direct examination of a witness, raised an issue which neither added to nor detracted from the defense of insanity; that such question was not objected to by the government; that such question and issue raised was stricken in the trial record and was brought forth by counsel for the express purpose of impugning testimony and discrediting allegations petitioner might conceivably voice in the future; that petitioner wanted to object to such question and issue raised as being improper, and irrelevant, and incompetent; that petitioner wanted to object to other questions and issues raised by both the defense and by the government as being improperly propounded and immaterial; that before the trial, counsel had warned petitioner if he himself objected to any testimony, questions, or issues raised by either side, the judge would stop the trial and "recommit you to Springfield"; that out of fear of this happening, petitioner voiced no objections whatsoever throughout the trial; that during the trial and recesses, court-appointed counsel refused to confer with petitioner or hold her private about the conduct of the trial; that by the foregoing, in part or as a whole, petitioner was denied the lawful right to seek redress from the court and challenge or protest any and all evidence presented at his trial, and was thus deprived of a fair trial.

The day following the conviction, September 27, 1964, petitioner was taken to the court for sentencing. Both counsel were present. The judge, the Honorable Bowrin W. Settle, indicated that a pre-sentencing inquiry was unnecessary; that he had read the probation report submitted on petitioner subsequent to his

first conviction in 1964, and that it would suffice. Counsel offered nothing in mitigation or extenuation. Mr. Calamia advised petitioner not to say anything when the judge granted him his ~~right~~ privilege of allocution. He said if petitioner remained silent and indicated no complaints or voiced no objections, the judge would probably put him on probation. In view of such advice, and only because of such advice, petitioner replied in the negative when the judge asked him if he had anything to say before sentencing. Whereupon, petitioner was sentenced to the maximum penalty of ten years without probation or any part thereof ~~suspended~~ suspended.

Notice of intention to appeal was furnished the court by counsel. During an interview at the jail, counsel, Mr. Calamia, ~~came~~ stated that he knew he was going to have to "win" the case on appeal." Petitioner replied, "I've heard that before?" Counsel said he would try to have petitioner's conviction reversed without him being remanded for a third trial. He added, "But you will probably have to go to a mental institution" because, as he indicated, there would be a federal law passed by the time petitioner's conviction was reversed that would make his commitment mandatory in view of the defense of insanity.

Shortly thereafter, petitioner wrote a letter to the United State Attorney General, asking ~~not~~ to begin serving his sentence pending outcome of appeal from his second conviction. He asked Captain O'Rourke to send this letter by registered mail. Counsel, Mr. Calamia, later told petitioner that he could no longer elect not to begin serving his sentence pending appeal, that the law had changed. When petitioner requested that counsel initiate legal action to keep him in El Reno pending appeal, that he feared his return to Leavenworth and that he was tired of being shuffled from place to place, counsel answered, "It wouldn't be ethical for me to do that."

Shortly thereafter, petitioner asked counsel, Mr. Adams, to submit a motion requesting that an appeal bond be set, informing him that friends were willing to post such a bond up to the amount of $50,000.00. Counsel vehemently objected. Petitioner insisted. Thereupon, counsel stated that the government would oppose the setting of any bond in petitioner's case on the grounds that he "planned to skip the country." Petitioner then insisted that counsel ~~oppose~~ request a hearing on the matter, and that he be permitted to testify and produce evidence that he had no such intentions and had made no such plans, that the government's assumption was incorrect. Counsel agreed that he would do so, and that he would appeal if petitioner was denied bond.

On October 29, 1966, petitioner was transported by automobile to the U. S. Penitentiary at Leavenworth, Kansas. During the first day of the trip, Deputy U. S. Marshal Jon Johnson informed petitioner that the motion for setting of bond had been denied, and that there had been a hearing in the matter in San Antonio. Petitioner alleges he was unlawfully barred from attending, testifying and presenting evidence on his behalf at the aforesaid hearing. On January 1967, petitioner received a letter from counsel which advised that the appellate court would not consider his appeal on denial of bond until it had reviewed the trial record, and that there would be a delay since he had been granted an extension of time in which to file the appeal from conviction. Petitioner alleges he has received no further information or advisement regarding said appeal).

On October 31, 1966, petitioner arrived Leavenworth Penitentiary. On December 1966, during an interview by his Caseworker or Parole Officer, Mr. Robert [illegible], he was asked numerous questions about the offense alleged, the defense raised at both of the trial, and the appeals. Mr. Widmer probed insecurity into

there arises, notwithstanding prior and current records in his possession which would supply him with any data he needed concerning petitioner's case history. Petitioner was asked many other questions unrelated to his case and custody, such as, "Where did you know Lee Harvey Oswald?" and "Why is the Secret Service interested in you?" Petitioner refused to answer questions of this nature. Finally, Mr. Pelkmen told petitioner "We are sending you to Springfield for treatment."

The same day petitioner complained to the Associate Warden for Custody, Mr. Charles E. Harris, that he was being asked questions by his Case Officer that he did not feel he was required to answer, that he had told Mr. Pelkmen he would answer no more questions, and that Mr. Pelkmen had told him he was going to be sent to Springfield "for treatment." Petitioner said that if he was to be returned to Springfield, he might as well be put over in "Building 63." Whereupon, petitioner was placed on "Lock-Status" in C-Cellhouse. Two signs reading "Off Limits" were situated on each side of the cell. For the rest of the time he spent in Leavenworth, no inmates were permitted to converse with him, nor was he allowed to talk to other inmates. He was subjected to numerous "shakedowns" and other unwarranted petty harassments, and accompanied by a guard whenever he went to the washroom.

On December 12, 1966, petitioner wrote a letter to Mr. John Doar of the Civil Rights Division, U.S. Department of Justice, mentioning that he was a prisoner on appeal, and complaining of the questioning by Mr. Pelkmen and the contemplated transfer to the U.S. Medical Center for Federal Prisoners, and that he had been subjected to "forced treatment" there in 1964. He received no reply from the Department of Justice. However, on January 5, 1967, he wrote

Thereafter, he received an answer to his letter from the Bureau of Prisons, which advised that since his case was on appeal, "you will not be subject to punishment because you did not wish to discuss it in these circumstances." The letter also stated that the matter of his transfer to the Medical Center for Federal Prisoners at Springfield was "not one which is open to appeal."

On December 21, 1966, Mr. Harris, AWC, asked petitioner if he would like to be taken off Locked-Status and go to work in the library the following Tuesday. Petitioner replied that he would. Whereupon, Mr. Harris stated petitioner would be taken off Locked-Status "this evening." But petitioner remained on Locked-Status until February 2, 1967, without any explanation, or ever hearing from Mr. Harris again. On that date, he was transported to the U.S. Medical Center for Federal Prisoners for the third time in three years. The day before he departed Leavenworth, Mr. Pittman told petitioner that actually he was being sent to Springfield in preparation for release on parole, that if petitioner would cooperate in answering questions he would probably be "out here in a couple of months."

Several days after entering the U.S. Medical Center for Federal Prisoners, which petitioner alleges is in every sense of the phrase a maximum security penal institution (regardless of what else it may represent), he was moved to a maximum security ward, where he is presently housed. During any and all periods of confinement at this institution, petitioner has not been given medication or undergone any similarance of "treatment," nor has he ever been in need of either.

On February 7, 1967, the Chief of the Correspondence Service, U.S.

Joseph F. Alberte, who is assigned as petitioner's doctor, told him it was "not clear" why he had been returned to Springfield. Petitioner advised he had not been interviewed by the prison psychiatrist at Leavenworth, Dr. H. Wayne Hoffsty, prior to his transfer, notwithstanding that he had asked an MTA, Mr. Wishler, on two occasions in February 1967 to tell Dr. Hoffsty that he wanted to speak with him about his pending transfer to Springfield. Mr. Wishler had informed petitioner he had relayed his message to Dr. Hoffsty.

On February 9, 1967, or during the succeeding week, petitioner was told by the Director of the U.S. Medical Center for Federal Prisoners, Dr. Pasquale J. Ciccone, in reply to his query as to why he had been sent back to Springfield, that "We don't rightly know."

Petitioner alleges that a recent psychiatric report submitted on him by the Chief Psychiatrist at Springfield, opines that psychiatric treatment "is not essential" to petitioner's "rehabilitation" or adjustment in life.

On April 19, 1967, petitioner received written notification, dated five days earlier, that his application for parole had been "continued for an Institutional Review Hearing in January 1969." In 1965, while at Leavenworth, he had received the same type of notification that his parole eligibility date had been continued for consideration in October 1966. Petitioner cites that both his prior and current sentence were imposed pursuant to Section 4209 (a) (2), Title 18, United States Code, Annotated. He alleges that consideration for parole, or a lack thereof, or the refusal to grant him parole in the face of expert medical opinion that he should be granted parole, is and has been used as a device to persuade him to disclose evidence crucial to his rightful

defense against the crime charged, outside of a court of law and without the presence of ~~counsel~~ legal counsel. Petitioner further alleges that previously at the U.S. Medical Center for Federal Prisoners he was questioned about the circumstances under which he met and knew Mr. Lee H. Oswald, the accused assassin of President Kennedy, about his alleged affiliation with an unpopular political party, about his political beliefs, and about his employment and activities during the period 1962-1963. Petitioner alleges he was coerced into answering such questions in that he was told by the examining physician that such questions had to be asked and answered in order "for us to make a proper evaluation of your mental condition and/or your competency to stand trial", or words similar and to that effect. On his present sojourn at Springfield petitioner has stated the specific reasons that he has no intention of answering any questions which do not fall strictly within the purview of his care and custody.

On May 19, 1967, petitioner was told by the Chief of the Classification Service that he will be returned to Leavenworth Penitentiary on or about June 12, 1967.

THIRTY-SIXTH SPECIFIC ALLEGATION: That by all the foregoing general and specific allegations, in part or as a whole, petitioner has been deprived of due process of the law.

WHEREFORE, petitioner moves and prays that the Honorable Court will consider all allegations contained herein as material and supporting to his Petition For Writ Of Habeas Corpus.

SO PETITIONER EVER WILL PRAY.

Richard C. Nagell

Signature of Petitioner

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} SS
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RICHARD CASE NAGELL, being first duly sworn under oath, presents that he has subscribed to the foregoing Memorandum In Support Of Petition For Writ Of Habeas Corpus and does state that the information therein is true and correct to the best of his knowledge and belief.

Richard C Nagell

Signature of Affiant

SUBSCRIBED and SWORN to before me this 6th day of June, 1967.

(Month) (Year)

William R. Martin

Notary Public

WILLIAM R. MARTIN
Notary Public, Parish of Orleans, State of La.
My Commission is issued for life.

My commission expires _____.

(Month) (Day) (Year)